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MICHAEL KEELER, *Member*
MAURICE SILVA, *Member*

NEVADA BOARD OF PAROLE COMMISSIONERS

April 26, 2012

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY NRS
233B.066**

**Informational Statement Regarding Changes to NAC 213.514.
LCB File R146-11**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 213.

Requirement 1: A description of how comment from public comment was solicited, a summary of public response and an explanation of how other interested persons may obtain a copy of the summary.

- a) **How public comment was solicited:** Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulations were sent by U.S. mail and Interdepartmental mail to the a list that includes individuals who have requested notifications, public buildings, newspaper, the Capital Press Room, TV Stations, various witness assistance organizations, courthouses, libraries, police departments, county libraries These documents were also made available at the web site of the Parole Board, <http://www.Parole.nv.gov>. Posting locations include the Parole Board's North and South offices as well as these locations:

BRADLEY BUILDING
2501 E SAHARA AVE
LAS VEGAS, NV 89104

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200 S THIRD STREET
LAS VEGAS NV 89155

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100 NORTH CARSON STREET
CARSON CITY, NV 89701

ATTORNEY GENERAL'S OFFICE
555 E. WASHINGTON AVENUE, STE 3900
LAS VEGAS, NV 89101

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100 STEWART STREET
CARSON CITY, NV 89701-4285

- b) **Summary of public response:** Most of the testimony was beyond the scope of the subject of the meeting, with individuals bringing up issues that are generally related to the Parole Board's treatment of sexual offenders, but not specifically to the adoption of the language that aligns the regulation to recent changes made by the Legislature to the NRS. No concerns over economic, business of appropriateness of the alignment with a revised NRS section were voiced.

- c) **Explanation of how other interested persons may obtain a copy of the summary.**

The summary of Public Response may be obtained by:

- Visiting one of our offices and asking for a copy
- Mailing a written request for a copy to either of our offices
- Requesting the information by calling either of our offices at (775) 687-5049 or (702) 486-4370
- Faxing a request to (775) 687-6736 or (702) 486-4376

Requirement 2: A statement indicating the number of persons who attended each meeting, testified at each meeting, and submitted written statements regarding the proposed regulations.

(a) A public workshop was held on Monday, March 5, 2012 at the office of the Parole Board located at 1677 Old Hot Springs Rd, Ste. A, Carson City, Nevada and video teleconferenced to the office of the Parole Board located at 4000 S. Eastern Ave, Ste 130, Las Vegas Nevada.

Number of persons who attended the public workshop:

Las Vegas: 1

Carson City: 1

Number of persons who testified at the public workshop:

Las Vegas: 1

Carson City: 1

Number of persons who submitted written statements prior to the public workshop: 0

Number of persons who submitted written statements during the public workshop: 0

(b) The meeting to adopt the regulations was held on Monday, March 12, 2012 at the office of the Parole Board located at 1677 Old Hot Springs Rd, Ste. A, Carson City, Nevada. The meeting was video teleconferenced to the office of the Parole Board located at 4000 S. Eastern Ave, Ste 130, Las Vegas Nevada. During the public workshop, written comments were both invited and submitted. The Board accepted written comments, which are attached.

Number of persons who attended the meeting to adopt the regulations:

Las Vegas: 1

Carson City: 4

Number of persons who testified at the meeting to adopt regulations:

Las Vegas: 1

Carson City: 3

Number of written statements (in addition to written statements submitted at the public workshop) regarding the proposed regulation: 1. (Please see Appendix B: Written Statement Submitted to the Board of Parole Commissioners, March 12, 2012)

Requirement 3: A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

The Board distributed of informational materials to the media and awaited responses from businesses. Inasmuch as the proposed change in the regulations has no significant impact upon businesses, no responses were forthcoming. Since businesses did not respond, no summary was prepared.

Requirement 4: If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change. The statement should also explain the reasons for making any changes to the regulation as proposed.

The regulation was adopted without change because no one attending either the workshop or the hearing voiced an objection to the specific wording of the regulation, which simply pointed to a revised NRS section for the definition of a sexual offender.

Requirement 5. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and in each case must include: (a) Both adverse and beneficial effects; and (b) Both immediate and long-term effects;

Estimated economic effect on Regulated Businesses

This regulation does not regulate any business. It has no significant impact upon businesses.

(a) Both adverse and beneficial effects

- Adverse effects: Not applicable
- Beneficial effects: Not applicable

(b) Both immediate and long-term effects:

Immediate effects: Not applicable.

Long-term effects: Not applicable

Estimated economic impact on the public.

(a) Both adverse and beneficial effects

Adverse effects: The proposed regulations do not appear to have any adverse economic effects.

Beneficial effects:

- Allows the Board to consistently apply the specific risk of a sexual offender to offend sexually in conjunction with evaluation performed by the Psych Panel.
- Alignment with revised statutory requirements may preclude or minimize lengthy legal challenges pertaining to parole hearings.

(b) Both immediate and long-term effects:

Immediate effects: No immediate effects are projected.

Long-term effects: No long term effects are projected.

Requirement 6. The estimated cost to the agency for enforcement of the proposed regulation.

The agency estimates that from an overall State perspective there will no additional costs associated with ordering additional Psych Panel evaluations.

Requirement 7: A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

This regulation does not duplicate or overlap any other state or government agencies' regulations.

8. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

The regulation does not include provisions which are more stringent than a federal regulation that regulates the same activity.

Requirement 9. If the regulation establishes a new fee or increase an existing fee, a statement indicating the total annual amount the agency expects to collect and the manner in which the money will be used.

The proposed regulation does not establish a new fee or increase an existing fee.

Requirement 10. The Regulation was adopted on March 12, 2012.

Requirement 11. Statement, if any, to interested person explaining principal reasons for and against adopting regulation and reason(s) for overruling the consideration urged against its adoption.

The Board received a written statement from Tonya Brown with the following points.

Point 1: Will any language in the current risk instrument be changed or expanded? If the language in the current risk instrument is being added to, how will it change?

Response: These items are not being changed. The only changes are being made to Section 5 of the regulation.

Point 2: What objective risk instruments will be used?

Response: These items are not being changed. The only changes are being made to Section 5 of the regulation. The Board explained that the instruments being used are known as Static-99 and the Minnesota Sex Offender Screening Tool-Revised. The Psych Panel uses these to create its risk assessment. The Board uses a separate risk instrument to predict General Recidivism.

Point 3: Questions referring to an article in the *Las Vegas Review*.

Response: These questions are beyond the scope of this regulation change, which has an extremely narrow focus.

Point 3, continued: A number of statements indicating dissatisfaction with the Parole Board in general.

Response: These questions are beyond the scope of this regulation change, which has an extremely narrow focus.

Please see Appendix B: Written Statement Submitted to the Board of Parole Commissioners, March 12, 2012 for Tonya Brown's comments.

Appendix A: Minutes of the meeting of the Board of Parole Commissioners, March 12, 2012

(Approval will be considered during the next Board Meeting.)

MINUTES
Of the meeting of the
BOARD OF PAROLE COMMISSIONERS

March 12, 2012

NOTE: The following minutes have not been approved and are subject to revision at the next meeting of the Board.

The Board of Parole Commissioners held a public meeting on March 12, 2012, beginning at 4:00 PM at the following locations:

Conference room at the central office of the Board of Parole Commissioners, located at 1677 Old Hot Springs Road, Ste. A, Carson City, NV video conference to Parole Board Office, 4000 S. Eastern Avenue, Ste. 130, Las Vegas, NV.

I. Open Meeting, Call to order, roll call 4:00 p.m.

The meeting was called to order by Chairman Bisbee. Present in Carson City were Commissioner Corda, Commissioner Endel and Commissioner Jackson. Present in Las Vegas were Chairman Bisbee, Commissioner Keeler, Commissioner Silva and Commissioner Gray.

Support staff in attendance:

David Smith, Hearing Examiner II
Denise Davis, Executive Secretary
Lupe Garrison, Hearing Examiner I
Julie Tower, Attorney General's Office

Members of the public present in Carson City included:

Tonya Brown
Richard Davis
Wesley Goetz

Members of the public present in Las Vegas included:

Laurie Johnson

II. Public Comment. No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2) of NRS 241.020.

Chairman Bisbee asked any member of the public that would like to make comments regarding anything other than the items listed on the agenda to come forward and limit their comments to 3 minutes. Chairman Bisbee reminded public that no action can be taken under this item.

Public comment – Carson City, NV

Tonya Brown expressed her complaint with the agenda for this meeting. She acknowledged the agenda states that written comments for the record has to be received by the Parole Board no later than March 7, 2012 and she declared that she did not receive the agenda until after that date. She also questioned item IV of the agenda. Chairman Bisbee explained that she would have time to express

herself when they were on that item number. Ms. Brown questioned rules 5 and 6 on the parole agreement regarding steel toe work boots. Chairman Bisbee affirmed that was also an agenda item and she would have time to express her concerns once they were on that item number. Ms. Brown explained that in 2007 there was a malfunction with the Nevada Department of Corrections (NDOC) which put false charges on the record of inmates that lead to inmates being denied. She stated Nolan Klein and Randall Brewer were some of the many inmates affected by this error. Chairman Bisbee advised Ms. Brown that she exceeded her time limit.

Patrick Davis stated he had attended many of the Board's meetings and workshops and that the Board does not give the public Due Process or the ability to ask questions or receive information during the hearings. Mr. Davis explained that it seems like to him that many of the Board's regulations including today's proposed changes do not meet Constitutional muster. Chairman Bisbee once again explained that the item regarding the regulations is a specific agenda item and he will be given the opportunity to address the regulations at that time. Mr. Davis stated that the Board does not understand Due Process nor does it allow for it and he questions the Board's training acting in a Quasi Judicial body.

Wesley Goetz relayed that he believes the Tier Assessments for Sex Offenders in Nevada are not scientifically done. Mr. Goetz declared that he also believes that treatment while in prison should lower the Tier Assessment score. He then stated that he tried to appeal his Tier Level and the panel told him they were only following their guidelines. Mr. Goetz stated was told by the Tier Assessment panel that he would need to get this change through the Legislative. Mr. Goetz explained that he believes Nevada should follow California's scientific Tier Assessment. He continued by stating Nevada's Tier Assessment should be validated and then re-validated by the courts. Chairman Bisbee explained that he would need to contact the Sex Offender Repository on this issue. Chairman Bisbee notified Mr. Goetz that his time was up for public comment.

Public comment – Las Vegas

No comment was made.

**III. For possible action Review/Approval of minutes from the August 13, 2011 meeting.
Comments from members of the public will be considered.**

Commissioner Gray informed Chairman Bisbee that there was a clerical error in the minutes. Chairman Bisbee informed the Executive Secretary of this error and asked for the correction to be made.

Patrick Davis stated that Parole and Probation is forcing counseling on Parolees that have no fact finding determination of need. Mr. Davis then continued by stating that he tried to appeal conditions of his Lifetime Supervision conditions and that he was told he could not do this unless his Supervising Officer agreed with this change. He related to the Board that this is not Quasi Judicial. Chairman Bisbee thanked Mr. Davis for his comments.

Tonya Brown stated again her pervious comments on steel toe work boots and how she believes and Supervising Officer should be the same sex as the offender if they are searching items that are personal (IE undergarments). Ms. Brown stated that she believes that victims' statements should not remain confidential. She continued that NDOC provided the Board with knowingly false information. Chairman Bisbee thanked Ms. Brown for her comments.

Mr. Goetz stated he believes that psychologists in prison should be licensed in the State of Nevada. Chairman Bisbee explained that they were referring to parolees on the street. Chairman Bisbee thanked Mr. Goetz for his comments.

Motion: Approve the minutes with the correction submitted by Commissioner Gray
Made by: Commissioner Keeler
Seconded by: Commissioner Gray

Votes in Favor: Gray, Keeler, Silva, Bisbee, Corda, Jackson, Endel

Votes Opposed: None

IV. Review/Approval of proposed change of Chapter 213 of the Nevada Administrative Code as specific in LCB File No. R-146-11.

Chairman Bisbee requested that David Smith, Hearing Examiner II, with the Parole Board to approach and explain the change that is proposed from the Workshop on March 5, 2012

Mr. Smith explained that the requested change to the regulations is a result of the Legislature changing the method in which the psych panel operates, including the definition of a sex offender. This change to the regulation will point the definition of a sexual offense to the new definition applicable to the psych panel, and for the purpose of applying the risk to re-offend with the parole guidelines.

Laurie Johnson stated that her interest here today is that there are objectives of the Assessment tools used by NDOC.

Chairman Bisbee provided Ms. Johnson with the contact information for NDOC.

Tonya Brown stated she has a draft that she would like to submit regarding her concerns on the way the proposed change is written. Chairman Bisbee explained that the only thing the proposed change does is that the sex offense is consistent with the change the legislature changed in 2011. Ms. Brown explained that urinating in public should not be labeled as a sex offender with lifetime supervision.

Mr. Davis explained that during the Workshop on March 5, 2011 the Board acted very professional and attempted to answer his questions but that he felt the Board did not give him a response. Mr. Smith provided Mr. Davis answers to his concerns.

Mr. Goetz started to describe his personal experience with the Psych Panel. Chairman Bisbee reminded Mr. Goetz that this time was set aside for public comment regarding this agenda number only.

Mr. Smith stated that he would accept Ms. Brown's written comments that she wanted to introduce and he would include them with the information for LCB.

Motion: To accept proposed changes of Chapter 213 of the Nevada Administrative code as specific in LCB File No. R-146-11

Made by: Commissioner Gray

Seconded by: Commissioner Silva

Votes in Favor: Gray, Keeler, Silva, Bisbee, Endel, Jackson, Corda

Votes Opposed: None

V. For possible action: The Board may act to adjourn

Motion: To adjourn the meeting on March 12, 2012

Made by: Commissioner Keeler

Seconded by: Commissioner Corda

Votes in Favor: Gray, Keeler, Silva, Bisbee, Endel, Jackson, Corda

Votes Opposed: None

Meeting adjourned at 4:47 p.m.

**Appendix B: Written Statement Submitted to the Board of
Parole Commissioners, March 12, 2012**

In LCB File No. R146-11 A Regulation to Amend
NAC 213.514 <sup>concerns about sex offender
tag due to urinating in public</sup>

1. Will the proposed language in #1. "The board will assign to each prisoner who is being considered for parole a risk level of "high" "moderate" or "low" according to the level of risk that the prisoner will commit a felony if released on parole." replace any language in the current risk assessment or will it be additional? Is additional how will it be used to change the current instrument?

2. "To establish the risk level, the Board will conduct an objective risk assessment using a combination of risk factors that predict recidivism." What objective risk assessment tool will be used?

3. 14-2012 Las Vegas Rev. Journal reports that Boot camp is not not working. The article reports that many have failed to complete the program and most have committed additional crimes after completion. What objective criteria is the Board going to implement to help predict more accurately who will commit a felony if released? Will the studies quoted many times by Dr. JAMES AUSTIN be used?

will this ~~Board~~ new proposed
amendment Give the the Board the
'Objective criteria' to release a parole
violent offenders with only one offense
committed when very young without
gang affiliation who have completed
prison programming and education
including college degrees even though
they have victim opposition?

I have attended many parole hearings,
meeting, etc. I watch in 2008 James Allen
was released on parole even though he had
a victim opposition, convicted of a violent
crime i.e. Killed an innocent person in his
own home during a robbery, had a
jury who sentenced him to death ~~for~~
~~parole to the street in 2008~~ whose jury
21 and now claims gang affiliation
in the current newspaper article when
others eligible for parole to the street
in 2008 whose jury give them life w/parole
and who had been in prison side by
side James Allen since 1981 were denied
and still are in prison. ~~James Allen~~

Appendix C: Distribution List

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DONALD YORK EVANS ESQ
PO BOX 864
RENO NV 89504

BARBARA KEENAN
711 PARK PASEO
LAS VEGAS, NV 89104

Register of Administrative Regulations
State of Nevada Legislative Building
401 S. Carson Street
Carson City, NV 89701-4747

KATHI BAKER
BOARD OF PAROLE COMMISSIONERS
1677 OLD HOT SPRINGS RD., STE. A
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Carson City, Nevada 89702

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